

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:INTL:B06

PLR-151454-13

Date:

June 26, 2014

### Legend

Taxpayer =

Shareholder =

Accountant =

Attorney =

Date 1 =

Date 2 =

Date 3 =

Dear :

This replies to your representative's letter dated December 19, 2013, by which you request on behalf of Taxpayer an extension of time under Treas. Reg. § 301.9100-3(a) to file a Form 4876-A ("Election to be Treated as an Interest Charge DISC") effective as of Date 1.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

### **Facts**

Taxpayer is a domestic corporation wholly owned by Shareholder. Shareholder is an individual engaged in a production activity as a sole proprietor. Shareholder is not personally sophisticated in Federal income tax matters. Accountant is a certified public accountant and has provided Federal tax advice to individuals and businesses, including Shareholder, for many years. Attorney has practiced for many years and represents many clients in Taxpayer's industry.

Shortly before Date 1, Accountant advised Shareholder of benefits that an interest charge domestic international sales corporation (IC-DISC) may provide. Relying on Accountant's advice, Shareholder retained Attorney to form Taxpayer and to prepare the legal documents, but not the Federal tax filings, pertaining to its intended qualification and operation as an IC-DISC. Taxpayer was incorporated on Date 1.

Accountant, having knowledge of these circumstances, agreed with Shareholder to take responsibility for Taxpayer's tax filings, including filing of Form 4876-A to qualify Taxpayer as an IC-DISC as of its incorporation. Taxpayer proceeded to operate as an IC-DISC, and Taxpayer did not take any position inconsistent with IC-DISC status.

The next year, on Date 2, Accountant discovered that he had inadvertently failed to file Form 4876-A. Over the course of the next few days, Accountant notified Shareholder of the failure to file the election and, on Date 3, assisted Shareholder and Taxpayer in engaging the representative who then submitted the ruling request that is the subject of this letter.

### **Law and Analysis**

Section 992(b)(1)(A) provides that an election by a corporation to be treated as a DISC shall be made by such corporation for a taxable year at any time during the 90-day period immediately preceding the beginning of the taxable year, except that the Secretary may give his consent to the making of an election at such other times as he may designate.

Section 992(b)(1)(B) provides that such election shall be made in such manner as the Secretary shall prescribe and shall be valid only if all persons who are shareholders in such corporation on such first day of the first taxable year for which such election is effective consent to such election.

Temp. Treas. Reg. § 1.921-1T(b)(1) provides, in part, that a corporation electing IC-DISC status must file Form 4876-A and that a corporation electing to be treated as a IC-DISC for its first taxable year shall make its election within 90 days after the beginning of that year.

Treas. Reg. § 301.9100-1(c) provides, in part, that the Commissioner, in exercising the Commissioner's discretion, may grant a reasonable extension of time under the rules set forth in Treas. Reg. §§ 301.9100-2 and 301.9100-3 to make a regulatory election under all subtitles of the Code except subtitles E, G, H, and I.

Treas. Reg. § 301.9100-1(b) provides that a regulatory election is an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin. For this purpose, an election includes an application for relief in respect of tax.

Treas. Reg. § 301.9100-3(a) provides that requests for extensions of time for regulatory elections that do not meet the requirements of Treas. Reg. § 301.9100-2 (automatic extensions) must be made under the rules of Treas. Reg. § 301.9100-3. Requests for relief subject to Treas. Reg. § 301.9100-3 will be granted when the taxpayer provides the evidence (including affidavits described in Treas. Reg. § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that the grant of relief will not prejudice the interests of the Government.

In the present situation, the election described in Temp. Treas. Reg. § 1.921-1T(b)(1) is a regulatory election as defined in Treas. Reg. § 301.9100-1(b). Therefore, the Commissioner has discretionary authority under Treas. Reg. § 301.9100-1(c) to grant Taxpayer an extension of time, provided that Taxpayer satisfies the standards for relief set forth in Treas. Reg. § 301.9100-3.

Based on the facts and representations submitted with Taxpayer's ruling request, we conclude that Taxpayer satisfies Treas. Reg. § 301.9100-3(a). Accordingly, Taxpayer is granted an extension of time of 60 days from the date of this ruling letter to file Form 4876-A. Such filing will be treated as a timely election to be treated as an IC-DISC for Taxpayer's first taxable year.

The granting of an extension of time to make the election is not a determination that Taxpayer is otherwise eligible to make the election or to claim DISC status or benefits. Taxpayer should attach a copy of this letter ruling to its Federal income tax returns for the taxable years to which this letter applies.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

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Christopher J. Bello  
Chief, Branch 6  
Office of Associate Chief Counsel  
(International)

cc: